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CURRENT LEGAL PERIODICALS AND BOOK REVIEWS.

COMMENTARIES ON THE LAW OF TORTS. By EDGAR B. KINKEAD, of the Columbus (Ohio) Bar. Two volumes, pp. xxx + 1739. San Francisco: Bancroft-Whitney Company, 1903.

The purpose of the author of these two volumes is so high and his research and thought have been so extensive and earnest that the reader is disposed to praise rather than to criticise. Brief reflection upon the works, treatises, legions of decided cases, relating to so important a branch of the law shows the difficulty of the task assumed in producing this new work on torts.

The title-page designates these commentaries as "A Philosophic Discussion of the General Principles underlying Civil Wrongs Ex Delicto," but this description hardly seems felicitous. The introductory chapter, on "The General Nature of Torts," is thoughtful and analytical, with a consideration of principles. Further, in the division of the subject into, so to speak, its numerous *genera* and more numerous *differentia* the evidence of scientific analysis is clear. Only actual examination of the plan in outline and the separate classifications (with the law under each) can adequately prove how well ordered has been the study of which these are the product.

It may be questioned, however, whether the body of the book consists of statements of elementary rules, of reasoning, of logical solutions of problems, and, in brief, of "discussion." For example only, let the question be taken, is one who voluntarily incurs peril caused by the negligence of another, in order to save the life of one imperilled by the same negligence, debarred from recovery upon the ground of his own contributory negligence? This was decided by the Supreme Court of Pennsylvania by a divided bench in *Corbin v. Phila.*, 195 Pa. 461. While the opinion of Justice Brown sustaining the right to recover cites authorities in New York, Massachusetts, Maryland, and other states in full support of the decision, the terse dissent of Justice Mitchell, concurred in by two colleagues, makes the question worthy of notice; it does not appear to be referred to in the present Commentaries. Another illustration may be found in the doctrine of the independent contract—*i.e.*, when it is maintained that by stipulation

of the contract the responsibility rests on the contractor and not on the owner. Statements as to the law are given (Vol. I, Sec. 49) and citations, but there is no discussion.

These are, however, merely instances. The development of a subject so comprehensive and containing so many topics and sub-topics had to be limited. Innumerable applications of law to facts are growing with the increasing number and complexity of human affairs and must be condensed. Thus only thirty-nine pages are given to the Liability of Public and Private Corporations, with important subdivisions—*e.g.*, the State, Counties, Townships, Municipal Corporations, Private Corporations, etc.

It is better to regard the merits of these volumes and to commend their value as to plan, arrangement, citations, statements of conclusions of law, and especially for the facilities they offer of ready reference to the points covered in the several chapters.

There is much in them that relates to the interests, the business, the inventions, the mechanics, and the progress of modern life—*e.g.*, chapters on Injury to Right of Personal Security by Negligence in the Use of Dangerous Agencies, including liability for injuries from blasting, electricity, explosions, fire-arms, fireworks.

In appropriate places there are cases in regard to Automobiles, their use in streets and roads; Bicycles, their legal status. Also in chapter XXIV will be found interesting and available citations as to Sleeping-Car Companies, Boats and Ships, Elevators. In chapter XXV is a Digest upon the Neglect of Physicians, Surgeons, and Apothecaries. There is probably no other book in which so much useful law, for present-day use, can be readily acquired; but in this reference to the practical side, the greater worth of the author's analysis is not to be overlooked or minimized.

COMMENTARIES ON THE LAW OF MASTER AND SERVANT. By C. B. LABATT. Vols. I and II, Employer's Liability. Rochester: The Lawyers' Co-operative Publishing Company, 1903.

In 1852, in his preface to the first edition of his work on "Master and Servant," the author, Mr. E. M. Smith, claimed to be a pioneer on a "path hitherto, if not altogether, untrodden, at least but imperfectly explored." About ten years before this Chief Justice Shaw, of Massachusetts, had delivered the decision which has since been regarded as the "principal fountain of the law" on the subject of the master's liability in